Price: As of today, RM 10,00 equal 16.10 Pengoe (sixteen Pengoe and ten heller). If, as a result of a change in the foreign exchange situation, the pengoe equivalent should decrease by more than 5% and we should not be willing, to compensate you for the decrease in proceeds by increased payments in marks you shall be authorized to cancel this agreement.

Payment: Payment shall be made against duplicate bill of lading through the German-Hungarian Clearing. The Reichmark payments shall be made by us to the German Clearing Fund (Verrechnungskasse) on your behalf to the account of the Hungarian National Bank.

Shipments: Shipment of the 100,000 ton of bauxite shall be started in the spring of 1940 as soon as weather conditions permit. You undertake, to deliver not less than 25,000 tons during the year 1940, another 35,000 tons during the year 1941, and the balance during the year 1942.

The obligation to make shipments terminates if bauxite of the agreed quality shall no longer be available in the mentioned mines in quantities which make mining commercially feasible and if substitute shipments from other mines shall not be possible.

In the event of disputes the parties agree for every controversy arising out of this final letter to submit to the exclusive jurisdiction and arbitration of the Royal Budapest Central Circuit Court in Budapest.

This final letter, as a confirmation of an oral agreement and as commercial letter is deemed to be exempt of fees; if, upon presentation of this letter to any authority fees should become payable they will be borne in equal parts by both parties.

We request you to confirm to us this oral agreement in identical form.

Very truly yours,

Giulini Bros., G.m.b.H.

Signatures

Executed before us
as witnesses

The correctness and genuineness of the above signature is hereby certified,
Ludwigshafen on the Rhine, March 6, 1940,
Chamber of Industry and Commerce, for the Palatinate, in Ludwigshafen on the Rhine,

Signatures "

We have noted the contents of the above and consider it as binding also on us.

Very truly yours,

Transdanubia Bauxit Reszveny Tarasag

(sgd.) KRAUSZ DR. TIMAR

Defendant's Exhibit 98

Enclosure 1

Aide Memoire

Recorded on October 24, 1940 in the office of Dr. Georg Ballay, attorney-at-law. Present were the undersigned.

In view of the Government decree on the changed operation of the foreign trade, the Hungarian National Bank has permitted the continuation of the delivery contract closed on March 6, 1940 between the Transdanubia Bauxit A. G. of Budapest, and Gebrüder Giulini G. m. b. H., of Ludwigshafen, for a period of three months, on the condition that the price be Reichsmarks 14.50 per ton free on rail at the mine. For this reason, the contracting parties have agreed to raise the price from Reichsmarks 10.00 to Reichsmarks 14.50 per ton, free on rail at mine, in accordance with the regulations of the Hungarian National Bank, for a period of three months, without affecting the other provisions of the delivery contract,* the start and the expira-

(Handwritten Note: * [Subject to approval by the Government of Nov. 26, 1940, Feb. 26, 1941.])

tion of the three months' period will be governed by the decision of the Hungarian National Bank.

Dr. Georg Ballay, as authorized agent for Rudolph Lucovnik, engineer, and the representatives of the Transdanubia have agreed that Article 3 of the lease of March 4, 1940 be raised from P(engö) 1.25 to P. 3.20 for those quantities of bauxite which are delivered within the period of three months mentioned in the preceding paragraph.

This increase will be duly reported to both the Royal Office of Duties and Taxes and the Hungarian National Bank.

The other provisions of the lease shall remain unchanged.

In addition, the Transdanubia Bauxit A. G. and Gebrüder Giulini G.m.b.H. have agreed that the provision of the delivery contract of March 4, 1940 regarding the guaranty of quality of the bauxite be changed as follows:

A bauxite shall be considered as conforming to the quality guaranty if it contains at least 47% aluminum oxide (Al_2O_3) usable for further processing. The yield of the

bauxite will be determined by deducting the disilicic acid content from the actual Al_2O_3 content.

The authorized agent of Rudolph Lucovnik, engineer, and the Transdanubia Bauxit A.G. have agreed to authorize Lessee to mine and utilize the Sekunda bauxite up to a quantity of 20,000 tons provided a yield of 47% is obtained.

Lessee shall be obliged to pay 50 Heller rent on each ton of Sekunda bauxite mined.

The provisions of Article 3 of the lease of March 4, 1940 shall determine the due dates of such lease payments.

(sgd.) Edgar Giulini
Heinrich Frick
Georg von Krausz
Dr. Georg Ballay

Defendant's Exhibit 105

TELEGRAM

A. NAT6 VIA RCA=CD ZURICH 39 18
NLT MASON HOUGHLAND=
=CARE SPUR DISTRIBUTING CO=

OVERSEAS INVESTORS INTEND SELLING PARTICIPATION TO MEET OTHER OBLIGATIONS WHAT I PERSONALLY DEEPLY REGRET PLEASE COMMUNICATE ULRICH SHREVEPORT WHO IS INFORMED ACCORDINGLY INTEND TO SAIL SOON POSSIBLE REGARDS=FRITZ DOLDERGRAND ZURICH 830A SE

Defendant's Exhibit 106

On January
Thirteenth
Nineteen Forty-one

Dear Fritz:

Friday, the 17th, I am leaving here for an inspection trip which will be interrupted at Charleston, S. C. by a three-day stop.

Leaving there, Friday, the 24th, I will go to Savannah, Georgia and I wondered if it would be possible for you to meet me there for a conference. If that point would not be convenient to you, I would be glad to adjust my trip to your convenience. I cannot well come all the way to Southern Florida at this time. Please wire me so I can make my plans.

We do not yet have the Spur December earnings, but I feel confident that they will be quite satisfactory. Of course, the taxation clouds grow darker, but there is nothing we can do about those.

Do not forget to give the best wishes of the entire family to Margot.

Sincerely yours,

(signed by Houghland
—M. J. K.)

Mr. Fritz Von Opel
224 Arabian Road
Palm Beach,
Florida

Defendant's Exhibit 107

HOTEL DE SOTO
SAVANNAH, GA.

Dear Mason!

I just came in at 1:30 a.m. Please call me in the morning at any time. It will take me 45 minutes to get ready.

Best regards

(Signed) FRITZ

Elapsed time 7 h. 48 min. for 452 miles. I feel a little shaky!

Defendant's Exhibit 108.

[EXCERPTS]

OVERSEAS FINANCE CORP. LTD. LIESTAL

BETEILIGUNGEN

&

WERTSCHRIFTEN

Depôt

BETEILIGUNG.

UNTERBETEILIGUNG ARGENTINIEN

Fr.

1939	Text	Soll	Haben	Konto No
June 22	Prov. Adler	23 175 —		
Juli 4	Vergtg. "Pesos 2 250 000 — ä 103 = $ 522548 ä 4.43	2 315 000 —		
" "	Vermittlg. Prov. Adler	5 793 80		
" 6	Belastg f.1 Tag Geldvorlage	192 40		
Dec. 31	Annulation		2 315 000 —	
			2 315 000 —	
			29 161 20	
		2 344 161 20	2 344 161 20	

Defendant's Exhibit 109

(Letterhead of Kresel, Hershkopf, Marin & Myerson)

December 9th, 1942

C. R. Krigbaum, Esq.
Internal Revenue Agent in Charge
225 Broadway
New York City

Attention: Mr. Albert Schwartz,
Internal Revenue Agent

Dear Sir:

Pursuant to a tentative closing arrangement made with Mr. Albert Schwartz, Internal Revenue Agent, I enclose herewith and am filing for the respective taxpayers therein named, the following:

1) Form 870 containing waiver of restriction on assessment and collection of deficiencies in tax for the taxable years 1939, 1940, 1941, executed by Uebersee Finanz-Korporation, A. G., by the undersigned as attorney-in-fact.

2) Income tax returns on Form 1120-NB of Uebersee Finanz-Korporation, A.G. for the calendar years 1936, 1937, 1938, 1939, 1940 and 1941, executed by me as attorney-in-fact.

3) Three affidavits of Hans Frankenberg, explaining the late filing of the returns for the years 1939, 1940 and 1941.

4) Form 870 containing waiver of restriction on assessment and collection of deficiencies in tax for the

calendar years 1936, 1937, 1940 and 1941, executed by Fritz von Opel.

5) Form 972, containing consent of Fritz von Opel as share holder, to exclude $137,890.25 in his gross income in his return for the taxable year ending December 31, 1937, as a taxable dividend received by him on the shares of stock of Uebersee Finanz-Korporation, A.G. (in duplicate).

6) Income tax returns on Forms 1040-NB, for the calendar years 1936 to 1941, inclusive, executed by Mr. von Opel, together with his affidavit explaining the late filing of each of said returns.

7) Form 973, information return, filed by Uebersee Finanz-Korporation, A.G., for the calendar year 1937 under §-28 of the Internal Revenue Code, executed by me as attorney-in-fact.

8) Personal holding company returns for the calendar years 1936 to 1941, inclusive, (some in duplicate as required by law) executed on behalf of Uebersee Finanz-Korporation, A. G. by me as attorney-in-fact, together with affidavit of Hans Frankenberg setting forth the reasons for the late filing of each of said returns.

This will further advise you that every effort will be made to expedite the payment of taxes, interest and penalty, if any, covered by the foregoing returns, by having Uebersee Finanz-Korporation authorize the Alien Property Custodian (which has vested all of Uebersee's property) to make payment out of funds and property of Uebersee so vested with said Custodian.

This will further confirm my arrangement that the tentative agreement of settlement reached with Mr. Schwartz covering the tax liability both of Uebersee Finanz-Korpo-

ration and Mr. von Opel, for the years 1936 to 1941, inclusive, includes the assessment of a delinquency penalty of 25%, even though the same is not specifically set forth in Forms 870 executed by Uebersee and Mr. von Opel, respectively.

Yours very truly,

(Signed) WM. PEYTON MARIN

WPM:GM

Defendant's Exhibit 110

(TELEGRAM)

NA2 58 NL XC=OSSINING NY JUNE 26 MASON HOUGHLAND=SPUR DISTRIBUTING CO=

WOULD LIKE TO SEE YOUR ENGINERS REPORT STOP FEEL PRETTY SURE OF HAVING SOLVED PROBLEM SMALL MODELL WORKS NICELY IF YOU SEND ME NORMAL NOZZLE & VALVE I SHALL BUILD & TEST FULL SIZE DEVICE IN BERLIN & RETURN IT TO YOU IN AUGUST ADDED EXTRA COST ABOUT TWO DOLLARS PER NOZZLE SUGGEST TO DISCONTINUE OTHER INVESTIGATIONS REGARDS=OPEL. . 818

Defendant's Exhibit 111

FRITZ
VON
OPEL
DIPLOM-INGENIEUR

St. Moritz, April 14th, 1936

My dear Mason,

a friend of my father is the manufacturer of so-called "exact pumps", which are used for the distribution of all kinds of heavy liquids, as i.e. varnish, salad-oil, motor-oil, linseed-oil and so on. They are used as well in grocery-stores as in garages and filling-stations and they are the only German system, which passed the Government's test for exact measurement. Figure 19 and 20 of the enclosed pamphlet show a filling-station-device and I wonder whether Spur can profitably use these pumps. In my opinion this problem is worth while studying it, as such pumps would cut out all expenses connected with the handling of glassbottles and so on. Furthermore it would enable you to get a closed cheque on the quantity sold, as I count the gallons are sold in the same way as done with gasolene. They may also be used to fill glassbottles with the exact amount of oil, which may be useful for certain distributions.

I can't quote you an exact price, not knowing the number of pumps you may be interested in, but I guess, that the price will be about $50.-.- to $70.-.-

The reason I write you about this is 1. because I think it may be of some interest to you, 2. because I meditate about buying these patents for a German factory, we control and with the idea in mind, of selling the patents in U.S.A. By this reason I ask you the favour of going over

the whole matter and of telling me, whether or not you see a market for these devices in U.S.A.

With best regards,

Yours sincerely

FRITZ v. OPEL.

Defendant's Exhibit 112

(TELEGRAM)

ADLER AND CO
HANNS FRANKENBERG
ADOLF GAENG ST. PETERSTRASSE 16
ZURICH SWITZERLAND

9-21-39 NIGHTLETTER

HAVE TODAY CABLED OVEREEES FINANCE CORPORATION AS FOLLOWS QUOTE PERMIT ME TO CALL TO YOUR NOTICE CAPITAL STOCK SPUR DISTRIBUTING CO INC. STANDING IN NAME OF HANNS FRANKENBERG AND ADOLF GAENG AS YOUR NOMINEES CANNOT BE SOLD EXCEPT AFTER COMPLIANCE WITH PROCEDURE CONTAINED YOUR AGREEMENT DATED NOVEMBER 27 1933 WITH ME WHICH GIVES ME RIGHT OF REFUSAL OF ANY SALE OF YOUR STOCK OR ANY PART. UNQUOTE PLEASE TAKE NOTICE OF CONTENTS OF ABOVE. AM INFORMED TODAY BY OPEL OF YOUR KNOWLEDGE OF THIS AGREEMENT AND OF YOUR INTENTION TO COMPLY WITH IT. WOULD APPRECIATE CABLED CONFIRMATION J. M. HOUGHLAND

Defendant's Exhibit 113

TRANSLATION (Excerpt)

RULES AND REGULATIONS NO. 6 IMPLEMENTING THE ORDER OF THE REICHSPRAESIDENT CONCERNING FOREIGN EXCHANGE CONTROL ISSUED ON OCTOBER 2, 1931

RGBl. Part. I, p. 533

Pursuant to Sections 15, 17, Subsections 1, 22 of the Order of the Reichspraesident concerning Foreign Exchange Control, dated August 1, 1931 (RGBl. pt. I, p. 421) the following Rules and Regulations are enacted:

ARTICLE I

Section I

(1) Individuals having their domicile or usual residence in the German Reich and provided that they have their domicile or place of management in Germany,

a. Corporations, corporations with limited partners, colonial corporations, incorporated and unincorporated mining associations, limited companies, cooperatives, mutual insurance associations, mortgage banks, ship mortgage banks;

b. Incorporated and unincorporated associations, incorporated funds, foundations, other funds devoted to a special purpose and other associations recognized by private law but not included under "a" above;

c. Commercial partnerships, limited and similar partnerships recognized by the law merchant in which the partners are deemed to be entrepreneurs (co-entrepreneurs);

d. Credit institutions governed by public law,

shall offer and upon request sell and transfer, not later than October 10, 1931, to the Reichsbank branch established for their locality (either directly or through a banking institution which has been granted authority by the Reichsbank to buy and sell foreign exchange), foreign currency, claims payable in foreign currency, foreign securities acquired after July 12, 1931 and domestic securities payable in a foreign currency which are not listed for trading on a German stock exchange, and gold (gold coins withdrawn from circulation, refined gold, gold in alloyed, crude or semi-manufactured form),

whenever such currency, claims, securities and gold exceeds, on October 2, 1931, a total value of two hundred Reichsmarks; for purposes of computing this amount spouses not permanently separated, parents and minor children (see Section 23 of the Income Tax Act) shall be deemed to be one individual.

(2) Persons subject to the provisions of Subsection (1) who are not in Germany on the effective date of these Rules and Regulations shall comply with the requirements of Subsection (1) not later than one week after their return to Germany.

(3) Persons whose foreign currency, claims payable in foreign currency, securities and gold do not have a value exceeding the amount referred to in Subsection (1) may be required to surrender such holdings within a period to be determined by a later notice.

(4) The companies referred to in Subsection (1)a and c, shall comply with the requirements set forth herein even if, for practical purposes, they must be deemed to be subsidiaries of a foreign firm.

Section 2

(1) The requirements of Section 1 shall also be complied with by persons who have complied with Rules and Regulations Nos. 1 and 2 implementing the Order of the Reichspraesident against the Flight of Capital and the Flight from Taxation of July 21 and 25, 1931 (RGBl. pt. I, pp. 387 and 396) and with Rules and Regulations Nos. 3 and 4 implementing the Order of the Reichspraesident concerning Foreign Exchange Control, issued August 29 and September 4, 1941 (RGBl. I, pp. 561 and 477) even if the assets have been declared exempt by the Reichsbank or a banking institution authorized by it in accordance with Section 1, Subsection (2) of the Order against Flight of Capital and Flight from Taxation dated July 19, 1931 (RGBl. pt. I, p. 373) or pursuant to Section 16, of the Order concerning Foreign Exchange Control.

(2) . . . . . .

Section 3

(1) The persons referred to in Section 1, Subsection (1) are required to offer and upon request to sell and transfer to the Reichsbank branch established for their locality (directly or through a banking institution which has been granted authority by the Reichsbank to buy and sell foreign exchange), within three days after their acquisition, currency, claims, securities and gold as defined by Section 1, Subsection (1) acquired after October 2, 1931 in any manner other than pursuant to a license issued in accordance with Section 2, Subsections (2) and (4) of the Order concerning Foreign Exchange Control and Section 10 of these Rules and Regulations, even though these assets do not have a value of two hundred marks.

(2) With respect to assets acquired within the exemption as provided for by Section 9, Subsection (2), the requirement established pursuant to Subsection (1) shall be complied with within one month after the acquisition if the person who acquired them shall then still be in possession thereof.

(3) Section 1, Subsection (1), second half of the sentence, Subsections (2) and (4) shall apply.

(4) . . . . . .

ARTICLE II

Section 9

(1) The exemption of one thousand Reichsmarks established by Section 1 of the Order concerning Foreign Exchange Control in connection with Section 10 of the Rules and Regulations No. 3 shall be reduced to two hundred Reichsmarks.

(2) . . . . . .

(3) . . . . . .

Section 10

Gold (as defined by Section 1, Subsection (1)) shall be acquired or transferred or brought to a foreign country or the Saar Territory, with the written approval only of the Office of Foreign Exchange Control Transactions affecting gold (as defined by Section 1 Subsection (1)) shall be entered into only with the written approval of the Office of Foreign Exchange Control.

Section 12

The term "transaction" as referred to in Section 3, 4, and 6 of the Order concerning Foreign Exchange Control and Section 10 of this Order shall include changes in legal relationships effected by levy of execution or of attachment.

Berlin, October 2, 1931. The Reichminister of Finances

H. Dietrich

On behalf of the Reichminister of Economics

Dr. Trendelenburg

Undersecretary

Defendant's Exhibit 114

TRANSLATION (Excerpt)

Order of the Reichspraesident Against the Flight of Capital From Germany and From German Taxation

Issued July 18, 1931

(RGBl. Part I, pp. 373 *et seq.*)

Pursuant to Section 48, Subsection (2) of the Reich Constitution the following Order is hereby issued:

Chapter 1. *The Duty to File a Report.*

Title 1. *The Duty to File a Report with the Reichsbank.*

Section 1.

(1) Persons, as defined by Section 2 of the Property Tax Act, of May 22, 1931 (RGBl. Part I, p. 237) who own

foreign money instruments or claims payable in foreign currency shall, within a period to be determined by the Reich Cabinet, offer and upon request sell and transfer to the Reichsbank pursuant to the general conditions governing its transactions, such monetary instruments and claims.

(2) The requirements as established by Subsection (1) shall not apply to any person who, within the period as determined pursuant to Subsection (1), shall report to the Reichsbank (Section 4) the foreign money instruments or claims and state that he needs the assets reported for purposes which are justified by the public interest in the national economic welfare.

(3) In the event that a statement is submitted pursuant to Subsection (2) the Reichsbank (Section 4) shall determine whether the purposes stated are justified by the public interest in the national economic welfare. If the Reichsbank does not deem the purposes thus justified it (Section 4) may demand that the foreign assets shall be sold and transferred in accordance with Subsection (1).

(4) Persons subject to the requirement of Subsection (1) to (3), who, upon the beginning of the period so determined pursuant to Subsection (1), shall be in a foreign country, shall comply with their duties within a period which shall not end prior to the lapse of one week after their return.

(5) The requirements set forth in Subsections (1) to (4) shall also apply with respect to such foreign securities which, after July 12, 1931, were acquired in exchange for foreign money instruments or claims payable in foreign currency.

Section 2.

(1) The duties established for owners by Section 1 shall also be complied with by any person who

1. is in possession of a reportable asset and claims it as his own;

2. exercises control over a reportable asset through a fiduciary, a holding company or in any other fashion.

(2) Any person, who, in accordance with the Reich Code of Internal Revenue, particularly Sections 103 *et seq.* thereof, is subject to the duties of a taxpayer, shall also be required to perform the duties of the taxpayer owed to the Reichsbank (Section 4) in accordance with Section 1.

Section 3.

(1) "Money instruments" for purposes of this Order shall mean money (coins, notes, bank notes and the like), remittances, drafts, checks and bills of exchange with the exception of small coins.

(2) "Claims payable in foreign currency" for purposes of this Order shall mean claims which the creditor may require to be paid in actual foreign currency. The term shall not include foreign securities and claims which do not fall due except upon notice exceeding three months.

Section 5.

(1) Any person who intentionally or negligently violates the provisions of Sections 1 to 4 shall be punishable by imprisonment. Whenever an intentional violation is particularly grave, the Court may sentence the accused to hard labor for a term not exceeding ten years.

(2) In addition to imprisonment, the Court may impose a fine. In imposing such fine the Court shall not be limited to a maximum amount.

(3) In addition to the sentence, the Court shall order confiscation of the assets with respect to which an intentional or negligent violation of Sections 1 to 4 has been committed. If the order of confiscation cannot be enforced, payment of an amount equal to the value of the assets shall be ordered. Upon confiscation title to the confiscated assets shall vest in the Reich. If an equal amount shall be ordered to be paid, payment shall be made into the treasury of the State.

(4) In addition to the sentence, publication of the sentence at the expense of the defendant may be ordered. The scope and manner of such publication shall be determined by the judgment. No publication shall be made later than six months after the judgment has become final.

Title 2.

Duty to file reports with the Tax authorities.

Section 6.

(1) Any person, as defined by Section 2 of the Property Tax Act of May 22, 1931, shall report to the Collector's Office, not later than July 31, 1931, interests as defined in Subsection 3. The report shall set forth the nature and amount of such interest.

(2) If a company is formed or an interest in a company acquired after July 24, 1931, the report shall be filed within one week upon formation of the company acquisition of the interest.

(3) Interest in a company shall be reportable if no more than five individuals or members of their family (Sections 67, Subsections (2) and (3) of the Reich Code of Internal Revenue, of May 22, 1931) shall jointly hold an interest therein exceeding fifty percent. The interest is reportable whether held directly or through a fiduciary or a holding company.

(4) Intentional violation of the provisions of Subsections (1) to (3) shall be punishable like a tax fraud; for particularly grave violations the defendant may be sentenced to hard labor for a term not exceeding ten years. Negligent violations of Subsections (1) to (3) shall be subject to the penalties provided for violations jeopardizing the collection of taxes. The provisions governing the criminal procedure for violation of the revenue laws shall apply.

Section 7.

(1) Compliance with the duties owed to the Reichsbank (Section 4) in accordance with Sections 1 to 4 shall not constitute compliance with the duty to file a property return with the Collector's Office with respect to foreign money instruments and claims payable in a foreign currency.

(2) With a view to such compliance and to the provisions granting immunity from prosecution for violation of the revenue laws (Section 8) the period for filing property tax returns shall be extended to July 31, 1931. A taxpayer who has filed a return but failed to include reportable assets shall report these assets to the Collector's Office not later than July 31, 1931.

(3) Any taxpayer who, in violation of any provision of law, fails to report, not later than July 31, 1931, taxable assets to the Collector's Office shall be punishable for such violation of the revenue laws in accordance with the provisions of the Reich Code of Internal Revenue. Particular-

ly grave, intentional violations may be punished by imprisonment at hard labor for a term not exceeding ten years.

Second Chapter.

Amnesty granted for Violation of the Revenue Laws.

Section 8.

(1) Any taxpayer who has failed to report taxable property, income or occupational earnings in violation of applicable law shall be granted an amnesty from the penalties incurred because of such violation of the revenue laws and shall not be liable to make the additional payments set forth in Subsection (2) if, after publication of this provision in the Reichsgesetzblatt, but not later than July 31, 1931, he reports the assets not previously reported to the Collector's Office having jurisdiction or another agency of the Reich Finance Administration or to the proper agency charged with collection of occupational taxes.

(2) . . . . . .

Section 11.

The Reich Cabinet is authorized to issue rules and regulations and general orders for the implementation of this Order.

Berlin, July 18, 1931

The Reichspraesident
von Hindenburg

The Deputy Reichschancellor and Reich Minister of Finance
H. Kietrich

The Reich Minister of the Interior
D. Wirth

On behalf of the Reich Minister of Economics
Trendelenburg,
Undersecretary

Defendant's Exhibit 116

Dr. Hanns Frankenberg
Adolph Gaeng

c/o Overseas Finance Corporation Limited
Obersee Finanz-Korporation A.-G.
Zurich 1

Anrich, den August 12, 1937
St. Peterstrasse 16

Messrs. Walter V. D. Bayer
and/or Andrew G. Clauson, jr.,
67, Wall Street,
New York, N. Y.

Dear Sirs,

In connection with the memorandum of agreement be tween Uebersee Finance Corporation and Rodessa Oil & Refining Corporation dated August 5, 1937, a copy o which is enclosed, we, as the nominees of Uebersee Financ Corporation and as stockholders of record of Rodessa Oi & Refining Corporation and Hurricane Petroleum Corpo ration, hereby appoint either or both of you to act for u as our attorneys and representatives in voting our stock executing documents or taking any other necessary action which may be required in order to carry out and con summate the plan, conditions and terms provided for i such agreement.

Yours truly,

/s/ Hanns Frankenber

/s/ Adolph Gaeng

Memorandum of Agreement between Uebersee Finance Corporation and Rodessa Oil and Refining Corporation.

AGREEMENT.

Rodessa Oil & Refining Corporation represented by its stockholders M. J. Grogan and B. P. Crittenden hereby agrees to transfer to and register in the name of the nominees of "Uebersee", Frankenberg and Gaeng of Zurich, Switzerland, one third (1/3) of its capital stock, viz. three hundred shares, in consideration of the payment to Rodessa, of the sum of two hundred fifty thousand dollars, New York U. S. A. Funds on or before November 1, 1937, of which

$148.729.— shall be furnished by Uebersee

$ 50.243.50 shall be furnished by Hurricane

$ 51.028.50 shall be furnished by De Soto

in consideration of cancellation of Crude oil advance, subject the following conditions and terms:

1. Rodessa shall acquire all of the capital stock of the Caddo Pipe Line Corp. and Pullman Oil Co. at cost price of each subject to the retention by Grogan and Crittenden of an oil payment obligation payable out of gas oil or other minerals produced from the acerage owned by Pullman and in a total amount of one million dollars, payable one third out of 3/8 of the entire production, one third out of 1/4 of the entire production and one third out of 1/8 of the entire production.

2. It is agreed between the contracting parties that the respective money contributions of "Crittenden and Grogan" and Uebersee shall be considered advances, repayable out of current funds, when available and

upon agreement and in that proportion to each as is represented by the respective advances of each to the total of advances. It is agreed at all times the advances of the parties shall be maintained in the same ratio as their respective capital stock ownership.

3. Uebersee agrees that, if necessary, it will hypothecate the producing leases, owned by Hurricane Petroleum Corporation in the style named "East Texas Field", in order to furnish its cash contributions at dates nominated in this agreement.

4. The contracting parties agree that the Grogan Oil Co. Sales Contract with Rodessa shall be adjusted to a basis of one eighth cent per gallon on all products sold from the beginning of operations of Rodessa to date and for the remainder of the contract period.

5. Uebersee agrees that it will as soon as possible execute a power of attorney in the name of Walter V. D. Bayer —67 Wall St., New York, N. Y., authorizing him under their cabled or written instructions to act in their behalf regarding matters pertaining to Hurricane and Rodessa and affiliated companies.

6. Uebersee agrees that it will pledge its Rodessa capital stock along with the stock of Grogan & Crittenden if required, in connection with any necessary financing of Rodessa. Also the parties agree that each will not sell, pledge or otherwise dispose of their capital stock holdings without first notifying the other owners who shall have the right to acquire such shares on the same terms and conditions as those included in a "Bona Fide" offer by others.

7. It is agreed between the parties that any dividends received from Rodessa prior to February 28, 1938, will be reinvested by the stockholders as advances to

Rodessa less amounts applicable to personal income taxes.

8. The stockholders of Rodessa hereby extend Hurricane Petroleum Corporation an option to acquire all of the stock of Rodessa at any time up to December 1, 1937, under the following terms and conditions:

a) The stockholders of Rodessa shall receive a 22-1/2% interest in the total outstanding capital stock issue of Hurricane Petroleum Corporation and Hurricane and/or Uebersee guarantees to increase the authorized capital stock issue of Hurricane in order to provide the additional shares required.

b) Hurricane and/or Uebersee agree that all stockholders of Hurricane shall have the right to subscribe proportionately to any additional issues of capital stock by Hurricane.

c) Uebersee or its associates hereby agree to advance as working funds the additional sum of one hundred fifty-thousand dollars to Hurricane if the stockholders of Rodessa consider such payment necessary in view of the working capital situation. If so required, Uebersee shall have until February 28, 1938, to make such payment, and actual exchange of the shares will be postponed until that time. Withdrawal of such advances shall be governed by terms of Paragraph 2.

d) Uebersee and/or Hurricane agree that the operations of the properties so acquired shall be included under the existing G&C management contract and, further, that earnings of Rodessa and its subsidiaries subsequent to August 31, 1937, shall be includ-

ed in the earnings upon which the management fee is based.

8. General: It is agreed by Crittenden on behalf of himself & Grogan that consideration will be given the following, from time to time as business conditions require:

a) That Grogan & Crittenden will leave, in the business, at interest, some part of their unpaid and earned management fees.

b) That Grogan Oil will defer collection of some part of their sales commission.

Zurich, August 5th, 1937.

Defendant's Exhibit 117

June 2, 1937.

Swiss Federal Banking Commission
Berne

We revert to your inquiry of April 13, 1937 and wish to make the following comments thereto:

1. The purchases of majority blocks of American stock, which we had contemplated, have taken place. The companies whose share we have acquired do not constitute a concern with each other.

2. The creditors are recruited from the same circles as our stockholders, and the stockholders belong exclusively to a very small (close) group. We emphasize that our com-

pany has no relations whatsoever with the general public, but conducts business solely with the groups closely associated with it.

In accordance with your wishes we enclose a copy of our last balance sheet.

Very truly yours,

1 Enclosure (mentioned)

[fol. 2325] Minute Entry of Argument and Submission
(Omitted in Printing)

[fol. 2326] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10464

UEBERSEE FINANZ-KORPORATION, A. G., Appellant,

v.

J. HOWARD MCGRATH, Attorney General, as Successor to the Alien Property Custodian, Appellee

Appeal from the United States District Court for the District of Columbia

OPINION

Argued November 13, 1950. Decided February 8, 1951

Mr. Thurman Arnold, with whom Messrs. Edward J. Ennis and Walter E. Gallagher were on the brief, for appellant. Mr. Milton V. Freeman also entered an appearance for appellant.

Mr. James L. Morrisson, Attorney, Department of Justice, with whom Assistant Attorney General Baynton and Mr. Joseph Laufer, Attorney, Department of Justice, were on the brief, for appellee. Mr. George B. Searls, Attorney, Department of Justice, also entered an appearance for appellee.

Before Clark, Prettyman and Fahy, Circuit Judges

PRETTYMAN, Circuit Judge:

Appellant brought this civil action to recover shares of stock in certain American corporations, which shares had been seized by and vested in the Alien Property Custodian. The underlying and surrounding circumstances are extended and complicated. For present purposes we need state only the few which control the conclusion to the controversy.

On October 5, 1931, Wilhelm and Marta von Opel, who were then and always remained nationals of Germany, gave

by a written instrument, to their son, Fritz, six hundred shares of stock in a German corporation. The instrument provided, in part:

> "I, Wilhelm von Opel, herewith transfer title to these shares to our son Fritz von Opel by assigning to him our claim for the delivery of these shares to us.
>
> "The usufruct in the shares is not assigned to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the death of the surviyor of them. However, 20% of all dividends and interest received will accrue to Fritz von Opel."

The instrument also provided that the proceeds of any sale of, or the property taken in exchange for, the transferred shares should be substituted for those shares. The [fol. 2327] property presently involved is governed by the above-quoted provision, being successor to and substituted for that property.

The instrument of gift created an *in personam* right in Wilhelm von Opel to demand that a usufruct be established, and such establishment could be effected at any time by actual or symbolic delivery of possession to the usufructuary or his agent. Such a delivery was accomplished by placing the shares (except qualifying directors' shares) in a safety deposit box and giving the key to an agent of Wilhelm von Opel. The District Court concluded that a valid usufruct was thus created, giving Wilhelm and his wife *in rem* rights in the shares, among which rights was the right to the income from the shares. We agree with that conclusion. Indeed it is not seriously contended before us that the usufruct was not at one time established or that, if established, such usufructuary interest did not include the right to the income from the shares.

Appellant says that the usufruct was disestablished in 1936, when the particular shares were sold and the essential co-possession of them was thus lost. But it appears that the sale was a form only, conceded by appellant to have been for the purpose of tax avoidance, and the transaction was thereafter reversed; indeed it does not appear that the co-possession was ever actually disturbed. This was the view of the District Court, and we see no reason to disagree with it. Appellant also says that the usufruct was waived. It

appears that waiver was discussed by the parties, but we are shown no evidence that a waiver was ever effectuated or intended to be effectuated.

The essence of the legislation dealing with enemy ownership or control of property[1] is the prevention of economic benefit to the enemy.[2] The epitome of such economic benefit would be the flow into enemy hands of earnings from American efforts. No phase of interest in property in this country fits more precisely into the intent and purpose of this legislation than does the ownership of the right to the dividends on the stock of domestic corporations. The language of the statute is sufficient to encompass that interest; a usufruct is the sort of "interest" of which the statute speaks. In the case at bar that right was owned by German nationals. The usufruct, a right *in rem*, which included a right to the dividends, was owned, apart from the title to the shares themselves, by German nationals. This case does not involve a diluted "taint"; it involves the ownership by enemy nationals of the economic benefits of American business. This seems to us to be a more obvious objective of the vesting provisions of the statute than is the bare ownership of a sterile legal title. As between the right to the naked tree and the right to the periodical fruit, the benefit to the enemy would be more in the latter than in the former.

The judgment of the District Court is affirmed on the foregoing ground. It is unnecessary that we consider other matters deemed by that court to support its conclusion.

Affirmed.

Clark, Circuit Judge, dissents.

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[1] Sec. 5(b) of the Trading With The Enemy Act of 1917, 40 Stat. 411, as amended by Sec. 301 of the First War Powers Act of 1941, 55 Stat. 839, 50 U. S. C. A. App. §§ 5(b), 616.

[2] Clark v. Uebersee Finanz-Korp., 332 U. S. 480, 92 L. Ed. 88, 68 S. Ct. 174 (1947).

[fol. 2328] [File endorsement omitted]

UNITED STATES COURT OF APPEALS

UEBERSEE FINANZ-KORPORATION, A. G., Appellant,

vs.

J. HOWARD MCGRATH, Attorney General, as Successor to the Alien Property Custodian, Appellee

Appeal from the United States District Court for the District of Columbia

Before Clark, Prettyman and Fahy, Circuit Judges

JUDGMENT—Filed February 8, 1951

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

Per Circuit Judge Prettyman.

Dated February 8, 1951.

Circuit Judge Clark dissents.

[fol. 2329] IN THE UNITED STATES COURT OF APPEALS

[Title omitted]

MOTION FOR CLARIFICATION, REHEARING OR MODIFICATION OF JUDGMENT—Filed February 16, 1951

Comes now Appellant and respectfully moves this Honorable Court that it clarify certain matters in its opinion of February 8, 1951 in the above-entitled case or, in the alternative, that it grant a rehearing or a modification of its judgment.

As grounds for this motion, Appellant states that it intends as soon as possible to file a petition for a writ of certiorari in the Supreme Court of the United States. The

Supreme Court in a previous decision in this same cause has indicated that the questions raised are of importance and await judicial clarification. (*Clark* v. *Uebersee Finanz-Korporation*, 332 U. S. 480, 489-490). This decision was rendered after reargument ordered by the Court (331 U. S. 870). Appellant believes that it will assist the Supreme Court in acting on the petition for a writ of certiorari if the basis of the affirmance of the lower court set out in the opinion is clarified in the following particulars, which for convenience will be set out as questions:

I

Is it the meaning of the Court that a right in rem (i.e., the usufruct) in shares of a Swiss corporation (Appellant, Uebersee Finanz-Korporation) creates a right in rem in stock of American corporations owned by and held as assets of the Swiss corporation? Does the Court believe that "*ownership*" of a right to dividends on the shares of [fol. 2330] Uebersee, a Swiss corporation, constitutes "*ownership*" of a right to dividends on the shares of the American corporations which Uebersee holds in its treasury?

A reading of the opinion indicates that the Court has answered both the above questions in the affirmative. The opinion states that by an original instrument of gift executed in 1931, Wilhelm von Opel transferred to his son Fritz 600 shares of a German corporation (Adam Opel A. G.). The Court states that this instrument created in Wilhelm von Opel a *right in personam* to demand that a usufruct be established in the German shares or in property taken in exchange for them. The opinion then refers to the Finding (Finding 37, R. 57-58) of the District Court that in 1935 Fritz von Opel established a usufruct in favor of Wilhelm and Marta von Opel by placing all his shares in Uebersee Finanz-Korporation (the appellant here) in a safe deposit box in Zurich and delivering the key to one Frankenberg, their agent for that purpose. Then the Court concludes without setting forth its reasons that this usufruct in stock of Uebersee was a "right in rem" and "ownership of the right to dividends" in the stock of the *American corporations*, which were the principal assets of Uebersee.

While this seems to be the ruling of the Court, Appellant

is not entirely certain such an interpretation of the opinion is correct for two reasons: (1) It has not heretofore been held in corporation law that a right in rem to shares of a corporation constitutes a right in rem or indeed any direct interest in the assets of the corporation; (2) Since the opinion does not discuss this point, it may be that the Court was under the impression that the District Court had found there had been a delivery of possession and a resulting usufruct in the shares of the American corporations which were seized by the Custodian.

The lower court approved confiscation and retention of the American shares, not on the ground that the enemy had any direct right in them, but because of alleged enemy taint of the Swiss corporation which owned them. This Court rejects enemy "taint" as a basis for its decision and seems to rely on enemy "ownership of the right to dividends" in the American shares. Clarification of the reasoning by which the Court concluded that there was an enemy-owned right in rem in the American shares and that enemy taint as found by the District Court is unim-
[fol. 2331] portant would assist the Supreme Court in determining the questions raised on certiorari.

II

Assuming the Court believes that there is a usufructuary right in rem in the American shares for 80% of the dividends during the life of Wilhelm and Marta von Opel, the following question arises:

Is it the meaning of the opinion that a life interest in 80% of the dividends on the stock of the American corporations, which the Court found to exist in the enemy, is a ground which justifies the Custodian retaining and confiscating the remaining interest of Fritz von Opel, a neutral?

It is, of course, Appellant's view that the stock in the American corporations was owned by Uebersee and that stockholders of Uebersee have no legal right to it any more than the stockholders of an American corporation have a legal right to its assets. If, however, the Court is correct in holding that the usufruct in the shares of Uebersee creates an equivalent right in rem in Uebersee's American assets, the opinion does not explain why it permits the

Alien Property Custodian to retain more than that right which it finds the enemy "owns". The remaining interest in the stock after the death of the enemy, confiscated in this case, is extremely valuable because the enemy Marta von Opel is over 75 years old.

The lower court approved confiscation and retention of the whole property because of its conception of "enemy taint". But the opinion of this Court does not appear to rest on this ground. Appellant believes that the Supreme Court will be aided in determining the character and importance of the questions presented if the basis for confiscation of a substantial and important interest in the shares owned by a neutral is clarified.

III

In the event the Court did not intend to hold that the Alien Property Custodian can retain absolute ownership in the American assets of Uebersee, because of Fritz von Opel's remaining interest in the shares of Uebersee, Appellant respectfully petitions for a modification of the Court's judgment. In that event, Appellant requests that the Dis-
[fol. 2332] trict Court be ordered to modify its judgment so as to award to Uebersee the interest in the shares of the American corporations other than the usufruct.

Wherefore, Appellant respectfully moves this Honorable Court that it clarify its opinion of February 8, 1951, in the above-entitled case, or, in the alternative, that it grant a rehearing or a modification of its judgment.

Respectfully submitted, Arnold, Fortas & Porter, Ring Building, Washington, D. C., by Thurman Arnold; Gallagher, Osherman, Connor & Butler, Bowen Building, Washington, D. C.; Edward J. Ennis, 165 Broadway, New York, New York, Attorneys for Plaintiff-Appellant.

Thurman Arnold, Edward J. Ennis, Walter E. Gallagher, of Counsel.

[fol. 2333] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

UEBERSEE FINANZ-KORPORATION, A. G., Appellant,

v.

J. HOWARD MCGRATH, Attorney General, as Successor to the Alien Property Custodian, Appellee

Memorandum on Appellant's Motion for Clarification of the Opinion of the Court

OPINION—June 22, 1951

Messrs. Thurman Arnold, Edward J. Ennis and Walter E. Gallagher for appellant.

Assistant Attorney General Baynton and Mr. George B. Searls, Attorney, Department of Justice, for appellee.

Before Clark, Prettyman and Fahy, Circuit Judges

PRETTYMAN, Circuit Judge:

Appellant asks for clarification of the opinion of the court in this matter [1] in three respects, or, in the alternative, for modification of the decision.

1. The first point upon which the appellant asks clarification concerns the view of the court as to whether the usufruct in shares of the Swiss corporation created a usufruct in the shares of American corporations owned by the Swiss corporation.

The usufruct here involved was originally created in 600 shares of stock in the Adam Opel Works, a manufacturer of motor cars in Germany. In 1931 these shares were sold, and the proceeds consisted of approximately $2,500,000 and 47,625 shares of General Motors stock. Thereafter the major part of those proceeds was used to purchase certain investments in the United States, consisting of stock in corporations located in the United States. These shares were the assets vested by the Alien Property Custodian

[1] Uebersee Finanz-Korporation v. McGrath, U. S. App. D. C., Feb. 8, 1951.

and the subject of the present lawsuit. The plaintiff is a Swiss corporation, which is a holding company acquired for the purpose of holding the proceeds of the sale of the 600 shares in the Adam Opel Works. It owned the vested property. All of its shares except three qualifying shares [fol. 2334] were placed by Fritz von Opel in lock box, and the key was delivered to an agent of Wilhelm von Opel. The interposition of this wholly owned holding company did not destroy or disturb the usufruct in the proceeds of the 600 shares of Opel stock. The interposition was of form only and not of substance. The co-possession of the shares of the holding company, pursuant to the terms of the usufruct agreement, was sufficient to perfect that usufruct. Appellant would establish what seems to us to be a purely formal separation between the ownership of the assets and the ownership of the shares of a wholly owned holding company. Whatever ownership the Swiss corporation had in its assets was subject to the usufruct agreement, and the co-possession of the shares of the holding corporation was sufficient to establish the requisite co-possession of its assets.

In the course of its discussion appellant says, "This Court rejects enemy 'taint' as a basis for its decision . . ." Appellant misunderstands the statement in the opinion. We said, "This case does not involve a diluted 'taint'; it involves the ownership by enemy nationals of the economic benefits of American business." That statement was an *a fortiori* statement. The Supreme Court had made it clear that enemy taint was sufficient to support seizure and vesting and that indirect as well as direct interest was within the phraseology of the statute, "any property or interest". Our observation was to the effect that in the case at bar the enemy interest was the complete and perfect sort of interest to which the statute was directed, and was not merely a taint. This is not a borderline case, in our view.

2. Appellant inquires as to our meaning in respect to 20 per cent of the shares, which it says is owned by Fritz von Opel. The usufruct agreement recited:

> "The usufruct in the shares is not assigned to Fritz von Opel. It remains with Wilhelm von Opel and his wife, hereafter called the parents Opel, until the death

of the survivor of them. However, 20% of all dividends and interest received will accrue to Fritz von Opel.

That provision is perfectly clear. No part of the usufruct in the shares was assigned to Fritz von Opel. The whole of the usufruct remained with Wilhelm and his wife. Fritz von Opel was given a contract right to receive from Wilhelm and his wife 20 per cent of the dividends and interest received by them. This right in Fritz was a contract right and not a right *in rem*.

3. Appellant's third request for clarification is really a request for modification and is premised upon Fritz von Opel's ownership of a 20 per cent interest in the shares. Since we hold that he had no such ownership, except a contractual right to receive a portion of the dividends received by the enemy owners, we need not consider further this portion of the motion.

Clark, Circuit Judge, did not participate in the foregoing memorandum.

[fol. 2335] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

ORDER—Filed June 22, 1951

On consideration of appellant's motion for clarification of the opinion of this Court in the above-entitled case, it is

Ordered by the Court that the motion be granted and that the opinion be, and it is hereby, clarified in the manner indicated in the memorandum this day filed herein.

Per Curiam.

Dated: June 22, 1951.

Clark, Circuit Judge, did not participate in the above-mentioned memorandum.

[fol. 2336] [File endorsement omitted]

UNITED STATES COURT OF APPEALS

[Title omitted]

ORDER—Filed June 27, 1951

On consideration of the appellant's motion for a rehearing of this appeal or a modification of the judgment of this Court herein, it is

Ordered by the Court as follows:

(1) That the motion for rehearing be, and it is hereby, denied;

(2) That the motion for modification of judgment be, and it is hereby, denied.

Per Curiam.

Dated: June 27, 1951.

[fols. 2337-2338] [Received endorsement omitted]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—May 8, 1951

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 8th, 1951.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Stipulation as to printed record (omitted in printing).

[fol. 2339] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 178

ORDER ALLOWING CERTIORARI—Filed October 15, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Clark took no part in the consideration or decision of this application.